

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:

RICHARD ALLEN MAGNI, SR., and  
TAMMY LYNN MAGNI,

Debtor(s).

RICHARD ALLEN MAGNI, SR., and  
TAMMY LYNN MAGNI,

Plaintiffs,

vs.

US BANK, N.A., ND;  
INTERNAL REVENUE SERVICE; and  
NEBRASKA DEPARTMENT OF REVENUE,

Defendants.

CASE NO. BK10-83270-TLS  
A11-8049-TLS

CHAPTER 13

ORDER

This matter is before the court on the debtors' motion for summary judgment (Fil. No. 26) against defendant US Bank, N.A., ND. No resistance was filed. Trinh P. Tran represents the debtors. No appearance was made for US Bank, N.A., ND. Evidence and a brief were filed and, pursuant to the court's authority under Nebraska Rule of Bankruptcy Procedure 7056-1, the motion was taken under advisement without oral arguments.

The motion is denied. Service on the defendant US Bank, N.A., ND is deficient. According to the return of service on file (Fil. No. 22), the defendant was served by certified mail. The summons and complaint were sent to "Pres. & Managing Officer, US Bank NA ND, 4325 17th Ave SW, Fargo ND." Two different ZIP codes were used. According to Rule 7004(h) of the Federal Rules of Bankruptcy Procedure, service on an insured depository institution shall be made by certified mail addressed to an officer of the institution, unless the institution has appeared by its attorney, in which case the attorney shall be served by first class mail. In the case, the summons was not mailed to the bank's attorney of record in the bankruptcy case.

IT IS ORDERED: For the foregoing reasons, the debtors' motion for summary judgment (Fil. No. 26) is denied.

DATED: September 29, 2011

BY THE COURT:

/s/ Thomas L. Saladino  
Chief Judge

Notice given by the Court to:

\*Trinh P. Tran

U.S. Trustee

Movant (\*) is responsible for giving notice to other parties if required by rule or statute.